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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Warfield & Sanford, Inc.

File: B-224465

Date: September 3, 1986

DIGEST

1. The requirement that a bidder have experience for a specific time period on a particular type of elevator installation and service is a definitive responsibility criterion, and a bidder's alleged failure to meet it does not justify rejection of its bid as nonresponsive.
2. A negative determination of responsibility of a small business, based on the bidder's failure to meet a definitive responsibility criterion, must be referred to the Small Business Administration (SBA) for consideration under the certificate of competency (COC) procedures; GAO will not question SBA's issuance of a COC absent evidence of fraud or failure to consider vital information.

DECISION

Warfield & Sanford, Inc. (WSI), protests the proposed award of a contract by the General Services Administration (GSA) to Elcon Enterprises, Inc., T/A Elevator Control Service (Elcon) under invitation for bids (IFB) No. GS-11P86MKC7266, for the replacement of elevator controls. We deny the protest in part and dismiss it in part.

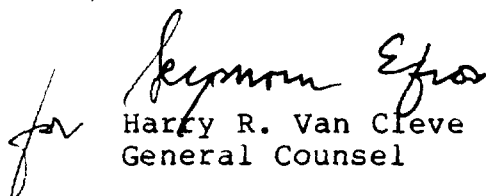
The IFB contained a definitive responsibility criterion that bidders have 3 years of experience installing and servicing elevators, and have installed at least two projects of not less than a 4-car group of elevators. Elcon, a small business, submitted the low bid and WSI's bid was next low. WSI protested to our Office that Elcon did not meet the experience requirement, and the contracting officer determined that Elcon was nonresponsive for failure to meet the 4-car experience requirement. Since Elcon is a small business, the contracting officer referred the matter to the Small Business Administration (SBA) for consideration under the certificate of competency (COC) procedures. The SBA determined that Elcon was responsible and issued a COC, which GSA argues is final and dispositive. We agree.

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WSI argues that the matter should not have been referred to SBA because Elcon's failure to meet the definitive responsibility criterion is tantamount to nonresponsiveness, which requires summary rejection of the bid by GSA. However, since Elcon took no exception to the IFB requirements, its bid is clearly responsive. We have expressly held that where, as here, a contracting officer finds a small business to be non-responsible because it does not meet a definitive responsibility criterion, under the Small Business Act, 15 U.S.C. § 637(b)(7)(A) (1982), he must refer the matter to the SBA under the COC procedures and if SBA determines that the bidder is responsible that decision is conclusive on the contracting officer. Baxter & Sons Elevator Co., Inc., 60 Comp. Gen. 97 (1980), 80-2 C.P.D. ¶ 414. Thus, the referral was proper and we deny this aspect of the protest.

To the extent that WSI is protesting SBA's affirmative determination, we will not review SBA's decision. We have recognized SBA's authority to consider whether, under the circumstances of a particular procurement, a small business concern is capable of performing despite the fact that it does not meet definitive responsibility criteria contained in a solicitation. Prevost's Small Engine Service, Inc., B-215704, Feb. 4, 1985, 85-1 C.P.D. ¶ 130; J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 C.P.D. ¶ 322. In addition, GAO is not empowered to question SBA's issuance of a COC unless the record shows that it was fraudulent, or that vital information bearing on the small business bidder's responsibility was not considered. Baxter & Sons, 60 Comp. Gen. 97, supra. Here, there is no allegation or evidence of fraud or of SBA's failure to consider the specific experience requirement.

The protest is denied in part and dismissed in part.


Harry R. Van Cleave
General Counsel